



July 29, 2015

VIA ELECTRONIC MAIL

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Re: Redwood City Saltworks Special Case

Dear Sylvia and Jessica,

Thank you both for taking the time to meet with Barbara Ransom and me on June 9, 2015. We appreciate the time and information that you shared, even if we respectfully and strongly disagree with EPA's position and much of what was said. Saltworks is exploring its legal options, and will certainly take all appropriate steps to protect its rights. That said, in the spirit of a collaborative relationship and hopefully resolution, we would appreciate the opportunity to continue to share information regarding updates on the status of EPA's assumption of responsibility for the Clean Water Act (CWA) jurisdictional determination (JD) for the Saltworks site. We are thus writing with several follow up questions that we would appreciate the opportunity to discuss.

At the meeting, you indicated that Jessica will oversee EPA's review of this matter and that EPA's review would include "everything." EPA indicated it intends to contract for the services of outside third parties to conduct EPA's evaluation of the matter and, ultimately, prepare the JD. EPA did not share with us what third parties you were in contact with in this regard, but indicated no request for proposal or "RFPs" had yet been issued.

Given the significant and direct interest of Saltworks in this process and the ongoing harm caused by additional delay, we would appreciate confirmation and updates regarding where EPA's review now stands and planned or anticipated steps forward. Specifically:

- What is the timing for review and completion of the JD?
- Do you still intend to contract with outside parties for the evaluation and completion of the JD?
- If so, has that party/parties been retained?
- What is the scope of work for the third parties?
- Will the project applicant be permitted to participate in the evaluation process for the JD, prior to any issuance of the JD, to have dialogue about the legal framework?

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We know it does not come as a surprise to EPA that Saltworks takes strong objection to EPA's late assertion of special case authority, and we respectfully request the opportunity to stay in close communication with EPA regarding updates on the Agency's review and opportunities for Saltworks to help facilitate information sharing to reach an appropriate resolution. EPA asserted its special case authority to assume control of and responsibility for the JD on or about March 18, 2015, almost three years after we originally asked EPA to help conduct the JD. And our concern is heightened by the fact EPA is not now "finalizing" or "wrapping up" a process with which it has identified concerns. Rather, EPA is only now starting anew on a blank page, asking for documents which it has had in its possession for over three years and longer, and is just starting to "look at everything."

We understood from the meeting that key EPA staff had not yet reviewed our May 2012 Request for an Approved Jurisdictional Determination, either prior to EPA choosing to special case the JD or since. As we urged and requested in the meeting, we believe a focused reading of the primary document by which the project applicant explained and legally justified its views regarding jurisdiction or lack thereof should occur first, prior to EPA proceeding further under its asserted special case authority, and that EPA should reconsider its approach based on the information in the Request.

We also have significant questions and concerns regarding EPA's reference in the June 9 meeting to a technical "data" investigation. More specifically, it seemed the third-party contractors EPA intended to retain were "environmental consultants." When we asked about the legal framework under which the JD would be analyzed, the focus seemed to remain on the need for technical details evaluation and investigation. The Corps, as you know, produced two legal memoranda thoroughly analyzing the legal framework by which the jurisdictional question for the site as to both the CWA and Rivers and Harbors Act should be approached and applied.

The San Francisco District of the Corps provided those legal memoranda to EPA Region IX on March 23, 2014. To our knowledge, EPA never refuted or identified provisions of the memos with which they disagreed or took issue. In fact, it was not until nearly a year later that EPA formally stepped in, only once the Corps notified EPA it would be issuing its JD for both the CWA and RHA on March 18, 2015. We trust that if EPA proceeds to conduct the JD, EPA will specifically address the provisions of the Corps legal memoranda with which EPA takes issue or which EPA believes are an incorrect statement of law as applied to this site.

Furthermore, EPA has been at the table regarding potential future uses of this site since 2006 and before. Some meetings regarding the jurisdictional issue in 2008 and 2009 with the Corps were hosted by EPA at its Region IX offices. Many EPA officials have been on tours of the site over the years. And, perhaps most significantly of all, our formal request for the JD in May 2012 was co-addressed to the San Francisco District of the Corps and Region IX of EPA. Thus, we would appreciate more clarity regarding why EPA perceives a need for more technical information.

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We would appreciate responses to the questions posed above as to the status of the JD and the process forward as you see it. Please let us know a convenient time to follow up on these requests. Many thanks for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Smith", with a long, sweeping horizontal line extending to the right.

David C. Smith

cc: Barbara Ransom, Cargill